IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11295 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIBHAI RAJAJI ZALA

Versus

STATE BANK OF INDIA

Appearance:

1. Special Civil Application No. 11295 of 2001

MR NILESH M SHAH for Petitioner No. 1

MR PR NANAVATI for Respondent No. 1

NOTICE SERVED for Respondents No. 2-4

MR MUKESH R SHAH for Respondents No. 5-6

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/03/2002

ORAL JUDGEMENT

Rule. Learned Counsel appearing for the

respondents waive service.

By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order at annexure "B" of the Government of India, refusing to make a reference of the industrial dispute as not fit for the following reasons:-

> "The workman/Union has not submitted any supporting documents in support of the claim that he had worked continuously for more than 240 days during the calendar year, hence, no merit for referring the dispute for adjudication."

It is recently held in several judgements of this Court, after referring to the relevant provisions of the Industrial Disputes Act and the judgements on the issue, that the power and jurisdiction of the Government in the matter of making of a reference extends to the examination of the existence of the dispute, but such power and jurisdiction does not include the examination of the dispute on merits. That power is vested in the Forum to which the dispute is required to be referred under the provisions of Section 10 of the Industrial Disputes Act.

It is obvious on the bare reading of the impugned order that the Government have transgressed it's jurisdictional limit and taken upon itself the task of examining the dispute on merits. Therefore, the impugned order is required to be set aside and the Government is required to be directed to reconsider the matter of making a reference of the dispute raised by the petitioner. Accordingly, rule is made absolute with a direction to the respondent No. 6 to reconsider the matter of referring the industrial dispute raised by the petitioner and make an appropriate order within two months of receipt of a copy of this order. There shall be no order as to costs.

(D.H.Waghela, J.)

*/Mohandas